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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 680

MARIA JERITZA SEERY,

Petitioner,

v.

THE UNITED STATES.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITIONER'S REPLY

It is significant that the Government has made no comment in reply, or in opposition to, the specific questions posed in the petition.

Instead, the Government argues (at p. 6) that the issues presented in the petition are "purely factual and restricted to this particular case."

The Government's position is not well taken. At least one constitutional question of importance and general application is involved which has never before been decided, resulting from the emergence of the United States as the

leading defender of the Western Powers with far-flung military and civilian installations, and will recur* many times in the future, viz.:

> Whether the U. S. Army may requisition private property abroad of an American citizen, remain in sole control to the exclusion of the owner, and fail to give a receipt or inventory for that which it has taken until after 13 months of occupation and hard usage, thus evading responsibility for payment of just compensation under the Fifth Amendment for missing and damaged property.

All the important and underlying factual issues herein have been resolved; viz.:

1. There is no dispute that the property received hard usage and was occupied by over 1,000 young officers over a two-year period, with parties and dances on alternate nights; that an orchestra and entertainers were hired; female guests invited; that there was drinking to the extent that might have been expected; that considerable damage was admittedly done to Mrs. Seery's luxurious personal belongings of both her 12-room Vienna apartment and Unterach castle, at which royal guests had formerly been entertained, and to her landscaped garden and real property in Unterach (Petition, A. 7).

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* Counsel for petitioner is appearing in a substantially similar matter now pending before the United States Court of Claims, entitled "*Sarah Hunter Kelly* v. *The United States*," Index No. 505-55, wherein Mrs. Kelly, a loyal citizen and resident of the United States (including the war years), owned an historic French chateau outside of Paris, which was requisitioned and occupied by the U. S. Forces from October 17, 1944 to August 22, 1945, as a replacement center; 2,500 officers and men passed through the property weekly and substantial damage admittedly occurred. No receipt was ever given by the U. S. Forces to Mrs. Kelly.

2. There is no dispute that the Army was in sole control, that Mrs. Seery, a loyal American citizen, was residing in the United States, that her sisters living in the Wachtl Villa (#125), only ten minutes' distance away, were barred from House #100 and the Guest House #99 and thus disabled from making an inventory at the time of requisition (Petition, p. 8).

3. There is no dispute that the receipt and inventory furnished to Mrs. Seery in September 1946 covered only what remained of her property 13 months after requisition. The Court below, in awarding $10,000, recognized that items of at least that value were taken or damaged which had not been listed in said receipt and inventory.

4. Nowhere has it been denied that the Army made previous inventories (of which multiple copies were required), which were not furnished to Mrs. Seery and were not produced herein by the Government. (Petition, pp. 21-22)

The only issue involved, which may possibly be stated to have a factual aspect, is whether or not Mrs. Seery's missing property (conceded to have been present in 1935) was on the premises at the time of requisition. The Court below held that the missing items *may* not have been there. In the absence of a proper receipt and inventory at the time of requisition—proof to which Mrs. Seery contends she was entitled in view of the fact that she was disabled by the Army from making her own inventory at that time—due weight should have been given to the oral testimony of the Government's own witnesses in petitioner's favor. It has not been disputed that the Government's witnesses gave such testimony, which is set forth in Question B of the petition (pp. 16-20). The only issue remaining then is a legal one, which was posed by petitioner: whether or

not the Court erred in disregarding consistently such testimony which established the presence of much of Mrs. Seery's missing property while the Army was in occupation.

However, the fundamental and primary issue before this Court is the spelling out of the respective responsibilities of the U. S. Forces and the loyal U. S. citizen-owner (absentee or otherwise), under the Fifth Amendment, when private property abroad is requisitioned. The license, by the Court below, to the Army to take property and fail to give a receipt therefor for a year after the taking—during which period the property disappeared or was damaged—if permitted to stand, will have far-reaching and disastrous consequences on the constitutional rights of United States citizens. It is respectfully submitted that this question should be reviewed and settled.

That the Government had a duty to produce its inventory records made at the time of requisition and during the first 13 months of occupation, under the circumstances of this case, and was guilty of a wrong in failing to produce them—should also be reviewed.

The responsibility of the Army should be clarified in a situation such as the instant case, where a locked silver trunk was opened by a U. S. Army Officer, part of its contents removed, the balance exposed to view, the trunk abandoned in an unlockable condition in the Guest House #99, and the empty trunk subsequently found in the attic of House #100 while the Army was still in occupation thereof. (Petition, pp. 18-19)

Two further questions were posed in the petition: (1) Did the Court below err in holding that Mrs. Seery had not proved how her property was disposed of, or the extent of damage done by the Army, or the authority for the mis-

appropriations, in disregard of the previous ruling of this Court that it is no concern of the owner what happens to her property while the Army remains in sole control and during her exclusion from the premises; and (2) Did the Court below err in restricting interest to less than 1% as part of just compensation although Mrs. Seery proved that damage had occurred for which she was entitled to compensation in 1945? (Petition, Questions C and F, pp. 20-21, 23)

It is necessary to correct a number of inaccurate statements made by the Government in its opposing memorandum, viz.:

Page 3, last paragraph:

It is not correct to state "Her proof of loss is based largely on her *memory* of an inventory * * * ". The true fact is that in 1935 when Mrs. Seery left Unterach, she and her secretary made two copies of a complete inventory, for her own personal use with such details as she required, of all the items on the premises at that time including those contained in the three vans from Vienna which had already arrived. The contents of one van, which did not arrive until a year later, was not listed in said inventory. (Petition, A. 10-11, F. #7-8)

Mrs. Seery's 1935 inventory was not "allegedly stolen". It *was* stolen, as the Court found (Petition, A. 10-11, F. #8; A. 37 (F. #54)). It was proved at the trial that said inventory—before its theft—was used as the basis in the preparation of petitioner's Schedule of Damages, 24 copies of which were filed with the Army.

Page 4, first paragraph:

This paragraph is replete with inaccuracies. The Court below found that there was "some evidence, by no means conclusive" of occupation by a unit of the German Army in 1941. As pointed out in the petition (p. 6), had the German Army occupied petitioner's property, it could not have remained hidden in the small village and certainly was not disposed to do so. Its presence would have been conclusively proved by the U. S. Army, which had in its control all local occupation records of that section of Austria.

It is a gross misstatement to say that "several of petitioner's friends and relatives, including the former German Consul at Los Angeles, occupied parts of the property with petitioner's permission.". Mrs. Seery (at that time the wife of Winfield Sheehan, President of Twentieth Century Fox—now deceased) had a wide circle of acquaintances in the theatre, in opera, in the conduct of charitable projects, among consular and other officials of many governments, etc. In 1941, at the request of the former German Consul in Los Angeles, she granted him permission to occupy two rooms in her Guest House #99—*which was not the requisitioned property* (Petition, A. 12-13). No one was ever given permission by her to occupy House #100.

The evidence is that the new wing of House #100, in which missing items were present, remained undisturbed with its rooms separately locked until 1944 (Petition, page 5).

There were never any disagreements—as the Government alleges—concerning the occupation of House #100. There was a disagreement concerning the Wachtl Villa,

House #125—*which was not the requisitioned property.* When Mrs. Seery's sisters and family, including 4 small children, returned from a concentration camp upon their release by the U. S. Forces, they found House #125 occupied by Mrs. Boone, the Army hostess, and a large group of her friends and family, who refused to permit Mrs. Seery's family to enter their own home. The Burgermeister correctly demanded that Mrs. Boone and her relatives and friends vacate the premises (Petition, A. 18, F. #23.)

Page 4, second paragraph:

This paragraph is misleading. The testimony of the Government's own witnesses (plaintiff had not a single witness of her own) before and during the occupation establishes the presence of much of Mrs. Seery's property (Petition, pp. 16-29).

The German inventories made in 1944 and 1945 were inadequate and *did not even list items set forth in the Army's July 1946 inventory* (Petition, pp. 19-20). These inventories, although inadequate, actually support the testimony of the Government's own witnesses in Mrs. Seery's favor, that her valuable property was removed by petitioner's sister at the direction of the German Authorities for safekeeping to the locked rooms in the Guest House #99. House #100, as the Government's witnesses testified, upon the arrival of the U. S. Army was refurnished as it had been when Mrs. Seery was in residence, that the "house was then completely furnished; it was furnished good." The production by the Government of the inadequate German inventories cannot absolve the failure of the U. S. Forces to furnish Mrs. Seery with a proper receipt and inventory upon requisition; nor can their production excuse the Government's failure to produce

herein the inventories made by the U. S. Army during the first 13 months of occupation.

Page 5:

While it is true, as stated in defendant's Argument, that the testimony and exhibits were examined by the Commissioner and by the Court, it was found necessary for the Court below to amend 29 of the Commissioner's 67 findings of fact and eliminate one additional finding completely. Upon review by this Court, consideration need be given only to the pages of the testimony and few exhibits specifically referred to in the petition.

The petitioner's request for certiorari should be granted, as prayed for.

Respectfully submitted,

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